IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: Robert J. Snyder   Examiner: Huynh, Ba

Serial No: 09/488,578   Group Art Unit: 2179

Filed: January 21, 2000   Docket: PU040186 CIP1

For: SYSTEM AND METHOD FOR REAL TIME VIDEO PRODUCTION AND
DISTRIBUTION

Mail Stop Appeal Brief - Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Applicant appeals the status of Claims 1-35 as presented in response to the non-final Office Action dated June 4, 2007, the final Office Action dated October 12, 2007, the final Office Action dated October 6, 2008 and rejected in the Advisory Action dated December 10, 2008, pursuant to the Notice of Appeal filed concurrently herewith and submits this appeal brief.

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1. **Real Party in Interest**

2.

The real party in interest is THOMSON LICENSING S.A., the assignee of the entire right title and interest in and to the subject application by virtue of an assignment recorded with the Patent Office on June 6, 2009 at reel/frame 010874/0443 from the inventors to Parkervision, Inc., and an unrecorded assignment from Parkervision, Inc. to Thomson Licensing S.A.

2. **Related Appeals and Interferences**

None

3. **Status of Claims**

Claims 1-35 are pending. Claims 1-35 stand rejected and are under appeal. A copy of the Claims 1-35 is presented in Section 8 below.

4. **Status of Amendment**

An Amendment under 37 CFR §1.111, filed with the PTO on December 10, 2002 in response to a non-final Office Action dated June 20, 2002, was entered. An Amendment under 37 CFR §1.111, filed with the PTO on February 7, 2003 in response to an interview with the Examiner dated February 5, 2003, was entered. An Amendment under 37 CFR §1.114, filed with the PTO on August 29, 2003 in response to a final Office Action dated March 4, 2003, was entered. An Amendment under 37 CFR §1.111, filed with the PTO on March 23, 2004 in response to a non-final Office Action dated December 23, 2003, was entered. An Amendment under 37 CFR §1.116, filed with the PTO on August 30, 2004 in response to a final Office Action dated June 15, 2004, was entered with the filing of a Request for Continued Examination filed on October 25, 2004. An Amendment under 37 CFR §1.111, filed with the PTO on March 11, 2005 in response to a non-final Office Action dated February 14, 2005, was entered. An Appeal was filed on July 5, 2005 in response to a Final Rejection dated June 7, 2005. An Amendment under 37 CFR §1.111, filed with the PTO on January 12, 2006 in response to a non-

final Office Action dated November 29, 2005, was entered. An Amendment under 37 CFR

§1.116, filed with the PTO on May 15, 2006 in response to a final Office Action dated April 3,

2006, was entered with the filing of a Request for Continued Examination filed on June 30,

2006. An Amendment under 37 CFR §1.111, filed with the PTO on September 11, 2006 in

response to a non-final Office Action dated August 09, 2006, was entered. An Amendment

under 37 CFR §1.111, filed with the PTO on February 22, 2007 in response to a non-final Office

Action dated November 28, 2006, was entered. An Amendment under 37 CFR §1.111, filed

with the PTO on August 3, 2007 in response to a non-final Office Action dated June 4, 2007,

was entered. An Amendment under 37 CFR §1.116, filed with the PTO on June 9, 2008 in

response to a final Office Action dated October 12, 2007, was entered with the filing of a

Request for Continued Examination which was also filed on June 9, 2008. An Amendment

under 37 CFR §1.116, filed with the PTO on November 13, 2008 in response to a final Office

Action dated October 6, 2008, was entered. No Responses/Amendments were filed subsequent

to the above Amendment filed on November 13, 2008. An Advisory Action dated December 10,

2008, to which this Appeal Brief is directed, is currently pending.

5.   Summary of Claimed Subject Matter

Independent Claim 1 is directed to "[a] method for producing a live or live-to-tape show"

(Claim 1, preamble).

"[E]nabling creation of an instruction sequence for the show" is described, e.g., at: pg. 6,

lines 8-27; pg. 15, lines 17 – pg. 16, line 8; and pg. 72, line 22 – pg. 73, line 6. Moreover, the

subject matter of this element involves, e.g.: items 132, 133, 116, and 118 of FIG. 1.

"[W]herein said instruction sequence defines at least one set of production commands for

controlling at least one production device" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27

– pg. 36, line 3; and pg. 72, line 22 – pg. 73, line 6. Moreover, the subject matter of this element

involves, e.g.: items 102, 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[S]aid at least one set comprising at least one segment file which comprises a group of

production commands that, when executed, operates to produce a segment of the show" is

described, e.g., at: pg. 72, line 27 – pg. 73, line 14 and pg. 58, lines 20-28. Moreover, the subject

matter of this element involves, e.g.: item 3110 of FIG. 31.

"[S]aid at least one-segment file comprising at least one scripted portion that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portion that includes at least one command activated independent of the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[S]aid at least one segment having a duration which is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting said at least one set-of production commands to control the least one production device to thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

Independent Claim 8 is directed to "[a] method for producing a live or live-to-tape show" (Claim 1, preamble).

"[E]nabling creation of an instruction sequence for the show" is described, e.g., at: pg. 6, lines 8-27; pg. 15, lines 17 – pg. 16, line 8; and pg. 72, line 22 – pg. 73, line 6. Moreover, the subject matter of this element involves, e.g.: items 132, 133, 116, and 118 of FIG. 1.

"[W]herein said instruction sequence defines at least one set of production commands, said at least one- set of production commands comprising at least one or more segment file, which comprises a group of production commands for controlling at least one production device, the commands when executed, operates to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 72, line 27 – pg. 73, line 14 and pg. 58, lines 20-28. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[S]aid at least one segment file comprising at least one scripted portion that included at least one command activated during a predetermined interval within a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves,

e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portion that includes at least one commands activated independent of the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[E]ach segment having a duration which is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting said at least one set of production commands to control the at least one production device to thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

"[E]xecuting said at least one commands to add a segment file to a show file prior to executing a first production command within the group of production commands corresponding to said segment file" is described, e.g., at: pg. 58, lines 20-28 and pg. 73, lines 3-14. Moreover, the subject matter of this element involves, e.g.: item 3120 and 3130 of FIG. 31.

Independent Claim 10 is directed to "[a] system for producing a live or live-to-tape show" (Claim 10, preamble).

"[A] processing unit in communication with at least one production device" is described, e.g., at: pg. 13, lines 27-30. Moreover, the subject matter of this element involves, e.g.: items 102, 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[G]enerating means for enabling creation of an instruction sequence for the show" is described, e.g., at: pg. 15, line 26 – pg. 16, line 8 and pg. 37, lines 14-27. Moreover, the subject matter of this element involves, e.g.: items 132 and 133 of FIG. 1 and item 299 of FIG. 2B and.

"[W]herein said instruction sequence defines at least one set of production commands, comprising at least one segment file, which comprises a group of production commands for controlling at least one production device, the commands, when executed, operate to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 58, lines 20-28 and pg. 72, line 22 – pg. 73, line 14. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[W]herein said at least one segment file comprises at least one scripted portion that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines

18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portions that includes at least one command activated independent of the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[W]herein the duration of each segment is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting means for executing said at least one set of production commands to control the at least one production device, to thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

Independent Claim 16 is directed to "[a] method for producing a live or live-to-tape show" (Claim 16, preamble).

"[R]eceiving verbal instructions and converting said verbal instructions into signals to enable creation of an instruction sequence for the show" is described, e.g., at: pg. 15, line 26 – pg. 16, line 8 and pg. 6, lines 14-17. Moreover, the subject matter of this element involves, e.g.: items 135, 133 and 132 of FIG. 1.

"[W]herein said instruction sequence defines at least one set of production commands, said at least one set of production commands comprising at least one segment file, comprising a group of production commands for controlling at least one production device, the commands when executed, operates to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 58, lines 20-28 and pg. 72, line 22 – pg. 73, line 14. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[E]ach segment file comprising at least one scripted portion that includes at least one command activated during a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portion that includes at least one command activated independent of the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[E]ach segment having a duration which is defined by execution of said instruction

sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting said at least set of production commands to control the at least one production device and thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

Independent Claim 17 is directed to "[a] system for producing a live or live-to-tape show" (Claim 17, preamble).

"[A] processing unit in communication with at least one or more production devices" is described, e.g., at: pg. 13, lines 27-30. Moreover, the subject matter of this element involves, e.g.: items 102, 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[M]eans for receiving verbal instructions and converting said verbal instructions into signals to instruct said processing unit to create an instruction sequence for the show" is described, e.g., at: pg. 15, line 26 – pg. 16, line 8 and pg. 6, lines 14-17. Moreover, the subject matter of this element involves, e.g.: items 102, 135, 133 and 132 of FIG. 1.

"[W]herein said instruction sequence defines at least one set of production commands for controlling at least one production device, the commands, comprising at least one segment file, comprising a group of production commands that, when executed, operates to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 58, lines 20-28 and pg. 72, line 22 – pg. 73, line 14. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[W]herein said at least one segment file comprises at least one scripted portions that includes at least one command activated during a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portions that includes at least one command activated independent of, the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[W]herein the duration of each segment is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting means for executing said at least one set of production commands to control

the at least one production device, and thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

Independent Claim 18 is directed to "[a] method for producing a live or live-to-tape show" (Claim 18, preamble).

"[C]reating an instruction sequence for the show to define at least one set of production commands" is described, e.g., at: pg. 72, line 27 – pg. 73, line 14 and pg. 15, line 16 – pg. 16, line 4. Moreover, the subject matter of this element involves, e.g.: items 102, 132, 133 and 135 of FIG. 1.

"[S]aid at least one sets of production commands comprising at least one segment file, which comprises a group of production commands for controlling at least one production device, the commands, when executed, operates to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 58, lines 20-28 and pg. 72, line 22 – pg. 73, line 14. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[S]aid at least one segment file comprising at least one scripted portions that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portion that includes at least one command activated independent of the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[E]ach segment having a duration which is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting said at least one-set of production commands to control the at least one production device, and thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

"[D]istributing at least one show segment over a computer network to a destination" is described, e.g., at: pg. 66, lines 4-15; pg. 67, lines 9-26 and pg. 68, lines 24-29. Moreover, the

subject matter of this element involves, e.g.: item 2910 of FIG. 29.

Independent Claim 26 is directed to "[a] method for producing a live or live-to-tape show" (Claim 26, preamble).

"[C]reating an instruction sequence for the show to define at least one-set of production commands" is described, e.g., at: pg. 72, line 27 – pg. 73, line 14 and pg. 15, line 16 – pg. 16, line 4. Moreover, the subject matter of this element involves, e.g.: items 102, 132, 133 and 135 of FIG. 1.

"[S]aid at least one set of production commands comprising at least one segment files, comprising a group of production commands for controlling at least one production device, the commands when executed, operates to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 58, lines 20-28 and pg. 72, line 22 – pg. 73, line 14. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[S]aid at least one segment file comprising at least one scripted portion that includes at least one command-activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portion that includes at least one command activated independent of; the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[E]ach segment having a duration which is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting commands to associate at least one segment delimiter with at least one segment file, said segment delimiter identifying a segment produced from a corresponding segment file" is described, e.g., at: pg. 68, line 10 – pg. 69, line 10.

"[E]xecuting said one or more sets of production commands to control at least one production device, and thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

Independent Claim 32 is directed to "[a] method for producing a live or live-to-tape

show" (Claim 32, preamble).

"[E]nabling creation of an instruction sequence for the show to define at least one set of production commands" is described, e.g., at: pg. 6, lines 8-27; pg. 15, lines 17 – pg. 16, line 8; and pg. 72, line 22 – pg. 73, line 6. Moreover, the subject matter of this element involves, e.g.: items 132, 133, 116, and 118 of FIG. 1.

"[A]t least one segment file which comprises a group of production commands for controlling at least one production device, the commands, when executed, operates to produce a segment of the show" is described, e.g., at: pg. 6, lines 19-27; pg. 35, line 27 – pg. 36, line 3; pg. 58, lines 20-28 and pg. 72, line 22 – pg. 73, line 14. Moreover, the subject matter of this element involves, e.g.: item 3110 of FIG. 31 and items 104, 106, 108, 110, 128 and 130 of FIG. 1.

"[E]ach segment file comprising at least one scripted portion that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator" is described, e.g., at: pg. 10, lines 18-28; pg. 64, lines 8-21; and pg. 61, lines 21-27. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[A]t least one non-scripted portion that includes at least one command activated independent of, the script" is described, e.g., at: pg. 10, lines 18-28 and pg. 73, lines 3-14.

"[E]ach segment having a duration which is defined by execution of said instruction sequence under the control of a human operator" is described, e.g., at: pg. 7, lines 4-15; and pg. 60, lines 13-18. Moreover, the subject matter of this element involves, e.g.: item 135 of FIG. 1.

"[E]xecuting said one or more sets of production commands to control the at least one production device to thereby produce the show" is described, e.g., at: pg. 72, lines 16-21 and pg. 73, line 15 – pg. 74, line 3. Moreover, the subject matter of this element involves, e.g.: item 3050 of FIG. 30.

"[E]xecuting commands to distribute a show segment and media related to said show segment to a destination" is described, e.g., at: pg. 68, line 10 – pg. 69, line 22. Moreover, the subject matter of this element involves, e.g.: item 2905, 2910 and 2940 of FIG. 29.

6.   Grounds of Rejection to be Reviewed on Appeal

Claims 1-35 stand rejected under 35 U.S.C. § 102(b) based upon a public use or sale of

the invention. The preceding rejection under 35 U.S.C. §102(b) is presented for review in this Appeal with respect to Claims 1-35, as argued with respect to independent Claims 1, 8, 10, 16, 17, 18, 26 and 32.

Regarding the grouping of the claims, Claims 2-7 stand or fall with Claim 1, Claim 9 stands or falls with Claim 8, Claims 11-15 stand or fall with Claim 10, Claims 19-25 stand or fall with Claim 18, Claims 27-31 stand or fall with Claim 26, and Claims 33-35 stand or fall with Claim 32, due to their respective dependencies. Claims 16 and 17 stand or fall by themselves.

7.   **Argument**

A. **Introduction**

The present invention relates to a system and method for automating the execution of a live or live-to-tape video show. The present application is a continuation-in-part of U.S. Serial Number 09/215,161 (which issued into U.S. Patent No. 6,452,612 on September 17, 2002) filed on December 18, 1998 and incorporated by reference in the specification of the present application (present specification, pg. 1, lines 5-10). The claims of present application stand rejected under 35 U.S.C. § 102(b) based upon a public use or sale of the invention.

An identical 35 U.S.C. § 102(b) rejection was issued in a related application (assigned U.S. Serial No. 10/121,608, which is also a continuation of U.S. Serial Number 09/215,161) as applied to Claims 117, 119 and 120. In this related application, the Applicants submitted a comprehensive response to the 35 U.S.C. § 102(b) rejection on June 26, 2007. After a telephone interview initiated by the Examiner, some minor amendments were made in a Supplemental Response dated August 21, 2007. Shortly thereafter, the 35 U.S.C. § 102(b) rejection was withdrawn and Claims 117, 119 and 120 proceeded to issue into U.S. Patent No. 7,302,644 on November 27, 2007.

Although the prior arguments submitted in the related case have been referenced and reiterated during prosecution of the present application, the Examiner has refused to withdraw the rejection. Applicants respectfully assert that the issuance of the related continuation application upon responsive and unopposed arguments to the very same rejection under 35 U.S.C. § 102(b) is wholly inconsistent with the currently asserted rejection by the Examiner in

the present application.

The Examiner's bases the present rejection primarily upon an improper interpretation of the declaration which had been executed by the inventor Alex Holtz and filed on December 10, 2002. The declaration explains that the present invention had been embodied in a software package that eventually became known as CameraManSTUDIO. It further discusses certain activities which had taken place around the time of the critical date (December 18, 1997). A brief summary of such activities is provided.

The declaration explains that "[a] number of critical features and functions of the invention had not yet been conceived by December 19, 1997" and that the CameraManSTUDIO product was not able to "to work correctly within a real-time studio environment" until sometime after a Beta License Agreement was executed with Rainbow Media Group (hereinafter "Rainbow") on December 19, 1997 (Alex Holtz declaration, ¶ 16 and 17). Pursuant to this agreement, Rainbow was obligated to use the beta version of the CameraManSTUDIO in a real-time news show environment, provide reports back regarding the performance of the beta version, and maintain the beta version in secrecy (Alex Holtz declaration, ¶ 17). In addition, the agreement allowed Rainbow to pay the purchase price for the beta version after it could be demonstrated that the beta version could be used to produce a real-time, live news show (Alex Holtz declaration, ¶ 18).

After the agreement was executed, the first beta version was not installed until February 1998 (Alex Holtz declaration, ¶ 17). This first beta version was not able to produce a real-time live news show despite best efforts (Alex Holtz declaration, ¶ 17). However, "after obtaining significant feedback, on-site observation and code development" at Rainbow's studios, a variety of additional features and functions were added to the beta version of CameraManSTUDIO which allowed it to work correctly within a real-time studio environment (Alex Holtz declaration, ¶ 17 and 18). Thus, the first public broadcast using CameraManSTUDIO was not made until June 22, 1998 and payment for the beta version was not made by Rainbow until on or about July 17, 1998 (Alex Holtz declaration, ¶ 18).

Before the beta testing agreement had been entered into with Rainbow, several trade shows had been attended in order to find a suitable beta tester. A brief summary of the activities which took place at each trade show is provided.

The 1996 National Association of Broadcasters (hereinafter "NAB 96") was the first

trade show at which the CameraManSTUDIO product was involved. At this trade show, products in the existing CameraMan product line (other than the CameraManSTUDIO) were demonstrated and marketed. However, "[t]he only activity related to what later became CameraManSTUDIO was 'proof of concept' discussions with certain attendees about some of the broad brush aspects of the system" (Alex Holtz declaration, ¶ 2). Also, "a PC generated graphic of a sample GUI" was shown on a single computer monitor (Alex Holtz declaration, ¶ 2). The sample GUI was merely an illustrative graphic of an exemplary GUI. No literature, marketing documents or other printed information was provided at this trade show.

The next trade show involving the CameraManSTUDIO product was the 1997 National Association of Broadcasters (hereinafter "NAB 97") which had been held in April of 1997 (Alex Holtz declaration, ¶ 4). At this trade show, a marketing document was distributed containing a list of the "speculative features and functions" of the CameraManSTUDIO product (Alex Holtz declaration, ¶ 5). Although the CameraManSTUDIO product was far from complete at the time of this trade show, an early prototype of the CameraManSTUDIO product was also provided at this trade show (Alex Holtz declaration, ¶ 7). However, the prototype used at this trade show "did not include the vast majority of source code (more than 1 million lines) that eventually were written for the CameraManSTUDIO System" (Alex Holtz declaration, ¶ 7). As explained above, it was not until sometime after the installation of the first beta version in February of 1998 that the product could be used to produce a real-time, live news show.

In addition to demonstrating the prototype, a proposed price was provided to the potential beta site testers at NAB 97 to determine pricing acceptability, strategy and value to the customer (Alex Holtz declaration, ¶ 9). However, after a number of attendees had asked whether the product was available for purchase, all were unequivocally told that the product was not for sale (Alex Holtz declaration, ¶ 9). As explained in the declaration, the purpose of demonstrating the product at this tradeshow was not to market this product to potential purchasers, but rather to seek possible "beta" site testers for determining whether the product would be operable in a real-time studio environment once a "beta" version of the product had been developed (Alex Holtz declaration, ¶ 8).

In June 1997, the Infocom trade show (hereinafter "Infocom 97") was also attended. At this trade show, no new information had been distributed that was not demonstrated at the NAB 97 tradeshow (Alex Holtz declaration, ¶ 10).

The fourth and final trade show involving the CameraManSTUDIO product was the Telecon trade show ("Telecon 97") which was held in October of 1997. At Telecon 97, a more advanced "alpha development stage" of the CameraManSTUDIO product was displayed. However, like the prototype at NAB 97, this prototype could not be used to produce a real-time, live television show (Alex Holtz declaration, ¶ 13). It was only after significant development of the Transition Macro code that a real-time, live television show could be produced (Alex Holtz declaration, ¶ 13). As explained above, these developments were not achieved until after the Beta License Agreement was executed with Rainbow and significant testing, reporting and on-site observation was conducted. Once again, the purpose of demonstrating the product at this tradeshow was once again to identify candidates willing to test a beta version of the product (Alex Holtz declaration, ¶ 13).

A marketing document was also distributed at Telecon 97 which described some of the features and functions of this prototype (Alex Holtz declaration, ¶ 13). In addition, a proposed price was once again provided to the potential beta site testers to determine pricing acceptability, strategy and value to the customer, but all who asked whether CameraManSTUDIO was available for purchase were told that it was not for sale at that time (Alex Holtz declaration, ¶ 15).

It should also be noted that between NAB 1997 and December 18, 1998, the CameraManSTUDIO product was continuously developed and various beta test versions were shown to a number of potential beta site testers including the Rainbow Media Group (Alex Holtz declaration, ¶ 10 and 11). However, a beta version of the CameraManSTUDIO was not actually offered to Rainbow (or any other potential beta site testers) until sometime after Telecon 97 (Alex Holtz declaration, ¶ 11 and 13). Moreover, these meetings involved discussions regarding potential pricing information for CameraManSTUDIO, but CameraManSTUDIO was never offered for sale at these meetings.

For at least the reasons discussed below, it is respectfully asserted that the above-referenced activities and documents fail to provide the necessary evidence required to maintain a rejection under 35 U.S.C. § 102(b), and further the Examiner's reliance on such is misplaced and improper.

B. Whether Claims 1-35 are Unpatentable under 35 U.S.C. § 102(b) based on Public Use or Sale of the Invention

Pursuant to 35 U.S.C. § 102(b), a patent cannot be obtained for an invention that was in public use or placed on sale more than one year prior to the filing of an application for a patent. Although the "public use" and "on sale" objections set forth in 35 U.S.C. § 102(b) are often considered together, MPEP § 2133.03 points out that they are separate and distinct bars to patentability that should be considered independently.

"The public use bar under 35 U.S.C. 102(b) arises where the invention is in public use before the critical date and is ready for patenting" (MPEP § 2133.03(a); *Invitrogen Corp. v. Biocrest Manufacturing L.P.*, 424 F.3d 1374, 76 USPQ2d 1741 (Fed. Cir. 2005)). In order for an invention to be considered "in public use", it must be shown that the invention was either (1) accessible to the public; or (2) was commercially exploited (MPEP § 2133.03(a); *Id.* at 1380, 76 USPQ2d at 1744). Moreover, it can be demonstrated that an invention is "ready for patenting" by showing "proof of reduction to practice before the critical date; or by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention" (MPEP § 2133.03(c)(I); *Id.* at 67, 199 S.Ct. at 311-12, 48 USPQ2d at 1647).

In *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 66-68, 119 S.Ct. 304, 311-12, 48 USPQ2d 1641, 1647 (1998), the Supreme Court enunciated a two-prong test for determining whether an invention was "on sale" within the meaning of 35 U.S.C. § 102(b). "[T]he on-sale bar applies when two conditions are satisfied before the critical date [more than one year before the effective filing date of the U.S. application]. First, the product must be the subject of a commercial offer for sale. Second, the invention must be ready for patenting." *Id.* at 67, 119 S.Ct. at 311-12, 48 USPQ2d at 1646-47. In clarifying the first prong, MPEP § 2133.03(b)(II) explains that "[o]nly an offer which rises to the level of a commercial offer for sale, one which the other party could make into a binding contract by simple acceptance (assuming consideration), constitutes an offer for sale under §102(b)" (*Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041,1048, 59 USPQ2d 1121, 1126 (Fed. Cir. 2001)). In order to show that an invention is "ready for patenting," the same guidelines apply as discussed above with respect to the public use bar.

Even if an invention is in public use or sale more than one year prior to the date of a U.S.

patent application, the applicant will not be barred from receiving a patent under 35 U.S.C. §

102(b) if the use or sale was for experimental purposes (MPEP § 2133.03(e)). "A use or sale is

experimental for purposes of section 102(b) if it represents a *bona fide* effort to perfect the

invention or to ascertain whether it will answer its intended purpose. If any commercial

exploitation does occur, it must be merely incidental to the primary purpose of the

experimentation to perfect the invention" (*LaBounty Mfg. v. United States Int'l Trade Comm'n*,

958 F.2d 1066, 1071, 22 USPQ2d 1025, 1028 (Fed. Cir. 1992) (quoting *Pennwalt Corp. v.*

Akzona Inc., 740 F.2d 1573, 1581, 222 USPQ 833, 838 (Fed. Cir. 1984))).

In determining whether a use or sale was experimental, the MPEP 2133.03(e)(4) explains

that following factors should be considered:

(1) the necessity for public testing, (2) the amount of control over the experiment
retained by the inventor, (3) the nature of the invention, (4) the length of the test
period, (5) whether payment was made, (6) whether there was a secrecy
obligation, (7) whether records of the experiment were kept, (8) who conducted
the experiment, ... (9) the degree of commercial exploitation during testing[,] ...
(10) whether the invention reasonably requires evaluation under actual conditions
of use, (11) whether testing was systematically performed, (12) whether the
inventor continually monitored the invention during testing, and (13) the nature of
contacts made with potential customers." *Allen Eng'g Corp. v. Bartell Indus., Inc.*,
299 F.3d 1336, 1353, 63 USPQ2d 1769, 1780 (Fed. Cir. 2002) *quoting EZ Dock*
v. Schafer Sys., Inc., 276 F.3d 1347, 1357, 61 USPQ2d 1289, 1296 (Fed. Cir.
2002) (Linn, J., concurring). >Another critical attribute of experimentation is the
"customer's awareness of the purported testing in the context of a sale."
Electromotive Div. of Gen. Motors Corp. v. Transportation Sys. Div. of Gen. Elec.
Co., 417 F.3d 1203, 1241, 75 USPQ2d 1650, 1658 (Fed. Cir. 2005).

In addition, it has also been explained that the "[t]esting of an invention in the normal

context of its technological development is generally within the realm of permitted experimental

activity. Likewise, experimentation to determine utility, as that term is applied in 35 U.S.C. 101,

may also constitute permissible activity" (MPEP2133.03(e)(6); See also *General Motors Corp. v.*

Bendix Aviation Corp., 123 F. Supp. 506, 521, 102 USPQ 58, 69 (N.D. Ind. 1954)).

In the instant case, the parent application was filed on December 18, 1998. Thus, a rejection under 35 U.S.C. § 102(b) based on public use or sale could only be deemed proper if there was a public use or sale of the invention prior to December 18, 1997, and such use or sale was not for experimental purposes.

It will be shown herein below that the Claims 1, 8, 10, 16, 17, 18, 26 and 32 are not barred under 35 U.S.C. § 102(b) based on a public use or sale which occurred before the critical date of December 18, 1997, and that Claims 1, 8, 10, 16, 17, 18, 26 and 32 should be allowed, including the claims dependent there from as identified in Section 6 herein.

B1.   Claims 1-35

Initially, it is respectfully pointed out that Claims 2-7 directly or indirectly depend from independent Claim 1, Claim 9 directly depends from independent Claim 8, Claims 11-15 directly or indirectly depend from independent Claim 10, Claims 19-25 directly or indirectly depend from independent Claim 18, Claims 27-31 directly or indirectly depend from independent Claim 26, and Claims 33-35 directly or indirectly depend from independent Claim 32. Thus, Claims 2-7 include all the elements of Claim 1, Claim 9 includes all the elements of Claim 8, Claims 11-15 include all the elements of Claim 10, Claims 19-25 include all the elements of Claim 18, Claims 27-31 include all the elements of Claim 26, and Claims 33-35 include all the elements of Claim 32.

It is respectfully asserted that a rejection under 35 U.S.C. § 102(b) based upon a public use or sale is improper for at least the reason that all of the Applicants' activities which took place prior to the critical date were clearly for experimental purposes to perfect the invention. "A use or sale is experimental for purposes of section 102(b) if it represents a *bona fide* effort to perfect the invention or to ascertain whether it will answer its intended purpose" (MPEP § 2133.03(e)). Commercial exploitation is permitted so long as it is "merely incidental to the primary purpose of the experimentation to perfect the invention" (MPEP § 2133.03(e)). As recited above, MPEP § 2133.03(e)(4) contains a list of factors which should be considered when determining whether a use or sale was for experimental purposes. Nearly all of these factors, when applied to the facts of the present case, suggest that the Applicants activities were clearly

for experimental purposes in an effort to perfect the invention.

Factors (1), (3) and (10) require a consideration of the nature of the invention, the necessity for public testing, and whether the invention reasonably requires evaluation under actual conditions of use. In the field of software development, it is very common to create a beta version of a program in order to permit actual users to test a program in the environment in which it will be utilized. No purchaser would be willing to spend tens, or even hundreds, of thousands of dollars on a software package that had never been tested under real world conditions. Thus, the solicitation of beta testers and the execution of the aforementioned Beta License Agreement were necessary parts of the testing and refining process for the CameraManSTUDIO process given the nature of the invention.

Moreover, factors (2), (8), (11) and (12) require consideration of the amount of control over the experiment, who conducted the experiments, and whether the testing was systematic and continuously monitored during the testing period. Most of the activity relevant to these factors had taken place after the critical date. As explained in the declaration filed by Alex Holtz, the Beta License Agreement required Rainbow to use the beta version of CameraManSTUDIO in a real-time news show environment and provide reports regarding the performance of the beta version (Alex Holtz declaration, ¶ 17). Moreover, the testing further involved on-site observation and significant code development by the Applicants (Alex Holtz declaration, ¶ 18). Given the Applicants involvement with the testing and code development, and the fact that a secrecy obligation was imposed, it is clear Applicants retained complete control of the experiment during the testing period.

Factor (4) considers whether the length of the testing period. In the present case, the testing period was conducted within a reasonable time limit. Potential beta testers were first sought at the NAB 97 tradeshow in April of 1997 (Alex Holtz declaration, ¶ 8). By December 19, 1997, the Beta License Agreement was executed with Rainbow (Alex Holtz declaration, ¶ 16). The CameraManSTUDIO was first tested in a live studio environment in February 1998 (Alex Holtz declaration, ¶ 20). The first public broadcast using CameraManSTUDIO took place on June 22, 1998 (Alex Holtz declaration, ¶ 18).

Factor (6) requires a consideration of whether there was a secrecy obligation imposed. The Beta License Agreement entered into with Rainbow required Rainbow to maintain the beta version of CameraManSTUDIO in secrecy. Although the discussions with the potential beta

testers at the various trade shows were not required to be kept confidential, it was believed that doing such would hamper efforts to find a suitable beta tester.

Factors (5) and (9) require a consideration of whether payment was rendered for the product and the degree of commercial exploitation during the testing. In the present case, the Beta License Agreement allowed Rainbow to pay the purchase price for the beta version of CameraManSTUDIO after it could be demonstrated that the beta version could be used to produce a real-time, live news show (Alex Holtz declaration, ¶ 18). However, the Beta License Agreement was not executed until after the critical date and payment was not rendered until another seven months after that (Alex Holtz declaration, ¶ 16 and 18). Besides this payment by Rainbow, no other payments had been accepted for any version of CameraManSTUDIO during this period of time. Although there had been some general discussion of pricing information with possible beta testers as discussed above, all who inquired about the availability of the CameraManSTUDIO product were told that it was not for sale (Alex Holtz declaration, ¶ 9 and 15). While these discussions may be considered commercial in nature, they were clearly incidental to the primary purpose of experimentation.

In addition to the factors discussed above, "[a]nother critical attribute of experimentation is the 'customer's awareness of the purported testing in the context of a sale.'" (MPEP 2133.03(e)(4); *Electromotive Div. of Gen. Motors Corp. v. Transportation Sys. Div. of Gen. Elec. Co.*, 417 F.3d 1203, 1241, 75 USPQ2d 1650, 1658 (Fed. Cir. 2005)). In this case, it was clear that Rainbow was aware of the testing being conducted by the Applicants as evidenced by the Beta License Agreement which required Rainbow to assist such testing. Likewise, it was also clear to all beta testers being sought at the various trade shows that they were being solicited for the purpose of testing the CameraManSTUDIO product in a real-time environment, and any potential beta tester who had inquired about purchasing the product was told that it was not available for purchase.

Therefore, in light of the discussion provided above, it is believed that an objective consideration of the factors set forth in MPEP § 2133.03(e)(4) can only lead to the conclusion that the Applicants' activities prior to the critical date represent a bona fide effort to perfect the invention. Thus, any rejection based on a public use or sale is improper for at least this reason.

In addition to the discussion provided, it is respectfully asserted that a rejection based on a public use or sale is also improper because the invention was not "ready for patenting" prior to

the critical date. The "ready for patenting" requirement applies to both the on sale and public use bars (MPEP § 2133.03(c)(I)). It can be demonstrated that an invention is "ready for patenting" by showing proof that the invention was reduced to practice before the critical date or, alternatively, by showing proof the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention prior to the critical date (MPEP § 2133.03(c)(I); *Id.* at 67, 199 S.Ct. at 311-12, 48 USPQ2d at 1647).

In the present case, the Examiner has failed to show either that the invention was reduced to practice before the critical date or that the inventor had prepared an enabling description of the invention prior to the critical date. However, the Examiner contends that the Preliminary Sales Manual, in conjunction with the brochures distributed at NAB 97 and Telecon 97, demonstrate that the CameraManSTUDIO was ready for patenting prior to the critical date (see page 6 of the Final Office Action mailed October 6, 2008). The Examiner asserts that the features listed in these documents, such as the creation of Transition Macro files, show that the CameraManSTUDIO product was ready for patenting. Applicants respectfully disagree.

While some of the features listed in these documents may have been included in the prototypes which were on display, many of these included features had not been fully developed and certainly were not ready for patenting as evidenced by several statements in the declaration. For example, it was explained that although the brochure distributed at Telecon 97 listed some of the features and functions of the prototype displayed at that trade show, that prototype could not produce a real-time, live television show until the Transition Macro code had undergone "significant development" (Alex Holtz declaration, ¶ 13 - 14). Thus, while the documents relied upon by the Examiner state that certain features, such as the Transition Macro feature, were included in the prototype, many of these features were far from complete and, thus, not ready for patenting.

Moreover, it appears that the Examiner has completely ignored a number of other statements in the declaration which explain that the invention was not ready for patenting until after the critical date. For example, paragraph 16 of the Alex Holtz declaration explains that "[a] number of critical features and functions of the invention had not yet been conceived by December 19, 1997... [and that] the 'alpha' version of CameraManSTUDIO could not produce a real-time, live television show for newsroom applications." Likewise, paragraphs 17-18 explain

that a real-time, live news show could not be produced until after "significant feedback, on-site observation and code development" had taken place as a result of the Beta License Agreement with Rainbow. The declaration further lists a number of features recited in each of the independent claims of the present application which had not been developed until after the critical date including, but not limited to, the creation of segment files, integration of segment delimiters, and triggering an event from a teleprompter (Alex Holtz declaration, ¶ 19). In view of these statements, it is clear that the present invention was not ready for patenting prior to the critical date.

Given that the present invention was not ready for patenting prior to the critical date, it is not possible that the present invention was disclosed to the public or placed on sale by the Applicants prior to such date. Therefore, any rejection based on a public use or sale prior to the critical date must be improper.

In addition to the reasons set forth above, a rejection based on a public use or sale is further believed to be improper because the other requirements necessary for issuing a rejection based on the "public use" or "on sale" bars have not been satisfied.

With respect to the on sale bar, "[o]nly an offer which rises to the level of a commercial offer for sale, one which the other party could make into a binding contract by simple acceptance (assuming consideration), constitutes an offer for sale under §102(b)" (MPEP § 2133.03(b)(II); *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041,1048, 59 USPQ2d 1121, 1126 (Fed. Cir. 2001)). In the instant case, the Examiner states that the present invention was offered for sale at the Telecon 97 tradeshow in October of 2007. In stating such, the Examiner appears to rely on paragraph 15 of the Alex Holtz declaration which states that "an exemplary purchase price for CameraManSTUDIO was provided" at this tradeshow. However, it is respectfully asserted that the Examiner is incorrect.

As pointed out above, the present invention was yet to be fully conceived at the Telecon 97 tradeshow and therefore could not be offered for sale at such time. Moreover, merely providing an exemplary price does not rise to the level of an "offer for sale." Given that a number of attendees at the Telecon 97 inquired as to whether the CameraManSTUDIO software was available for purchase and were told that it was not for sale (Alex Holtz declaration, ¶ 15), it is clear that the exemplary price provided at the time was not an offer which the other party could make into a binding contract by simple acceptance. Therefore, there was no offer for sale

at the Telecon 97 tradeshow.

The Examiner also contends that the 1997 Annual Report discloses the sale of the CameraManSTUDIO in 1996 and 1997. In stating such, the Examiner appears to rely on a statement on page 9 of the document, which states:

> The Company's revenues to date consist of sales of CameraMan systems and various accessories which complement those systems. Revenues for the years ended December 31, 1997, 1996 and 1995 were $10,799,067, $9,195,811, and $3,902,546, respectively.

While this statement recites the revenue generated from the CameraMan product line in the years from 1995-1997, it does not provide any discussion regarding the sales of the specific CameraManSTUDIO product. This is because the CameraManSTUDIO product was not available for purchase until sometime in 1998 as evidenced by the last paragraph on page 9 which goes on to state (emphasis added): "[t]he Company anticipates a continued increase in revenue in 1998, primarily *as a result of the introduction of its CameraManSTUDIO product during the first half of 1998.*" Given that the CameraManSTUDIO had not been introduced into the CameraMan product line until after 1998, there is no possible way the Examiner could be correct in stating that the 1997 Annual Report discloses the sale of the CameraManSTUDIO in 1996 and 1997.

In light of the comments provided above, it is respectfully asserted that the present invention was not sold or offered for sale at any time prior to the critical date. Given such, any rejection based on the "on sale" bar in 35 U.S.C. § 102(b) would be improper.

With respect to the "public use" bar, the Examiner has also failed to show that the invention was in public use prior to the critical date. In order to show that an invention is "in public use," it must be shown that the invention was either (1) accessible to the public; or (2) was commercially exploited (MPEP § 2133.03(a); *Id.* at 1380, 76 USPQ2d at 1744). In the present case, the Examiner asserts that "the instant claim limitations were disclosed to the public in those CameraManSTUDIO versions during the above tradeshows" and that further public disclosure was provided when the "beta version[s] of the CameraManSTUDIO were offered to the public between April 97 and December 19, 1997" (page 8 of the Final Office Action mailed October 6, 2008). Applicants respectfully disagree with the Examiner's assertion.

As explained above, the present invention was not "ready for patenting" until sometime subsequent to the critical date. Since the invention was not ready for patenting before the critical date, it logically follows that the invention could not be presented to the public or commercially exploited prior to the critical date. Therefore, neither the prototypes at the tradeshows, nor the beta versions presented to potential beta testers, were capable of disclosing the present invention to the public. Accordingly, it is respectfully requested that these statements be granted the proper deference they deserve and that any finding of public use be withdrawn.

For at least the reasons set forth above, Claims 1, 8, 10, 16, 17, 18, 26 and 32 are not barred under 35 U.S.C. § 102(b) based on a public use or sale which occurred before the critical date of December 18, 1997. Moreover, all remaining claims depend from either Claims 1, 8, 10, 16, 17, 18, 26 and 32, or a claim which itself is dependent from one of these claims. Accordingly, all remaining claims are not barred by 35 U.S.C. § 102(b) either. Thus, reconsideration of this rejection is respectfully requested.

C.   Conclusion

For at least the reasons discussed above, the claims of the present application were not in public use or on sale more than one year prior to the critical date. Accordingly, it is respectfully requested that the Board reverse the rejections of Claims 1-35 under 35 U.S.C. § 102(b).

Please charge the amount of $540.00, covering fee associated with the filing of the Appeal Brief, to **Thomson Licensing Inc., Deposit Account No. 07-0832.** In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge **Deposit Account No. 07-0832** as required to correct the error.

Respectfully submitted,

BY: /Robert B. Levy/
Robert Levy, Esq.
Registration No.:28,234
Attorney for Applicants

Thomson Licensing LLC
Patent Operations
P.O. Box 5312
Princeton, NJ   08543-5312

8.   CLAIMS APPENDIX

1. (Rejected) A method for producing a live or live-to-tape show, comprising the steps of:

(a)   enabling creation of an instruction sequence for the show, wherein said instruction sequence defines at least one set of production commands for controlling at least one production device, said at least one set comprising at least one segment file which comprises a group of production commands that, when executed, operates to produce a segment of the show, said at least one-segment file comprising at least one scripted portion that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator, and at least one non-scripted portion that include at least one command activated independent of the script, said at least one segment having a duration which is defined by execution of said instruction sequence under the control of a human operator; and

(b)   executing said at least one set-of production commands to control the least one production device to thereby produce the show.

2. (Rejected) A method of claim 1, further comprising the step of:

(c)   executing said at least one command to add a segment file to a show file prior to executing a first production command within the group of production commands corresponding to said at least one segment file.

3. (Rejected) A method of claim 2, wherein a subsequent segment file is irreversibly appended to said show file prior to executing a first production command within the group of production commands corresponding to a preceding segment me.

4. (Rejected) A method of claim 3, wherein the group of production commands corresponding to the subsequent segment file includes instructions for transitioning from the preceding show segment to the subsequent show segment.

5. (Rejected) A method of claim 2, further comprising the step of:

(d)   executing at least one command to store said show file in a memory means.

6. (Rejected) A method of claim 1, further comprising the steps of:

(c)   executing at least one command to record a show segment for subsequent playback; and

(d)   executing at least one command to integrate a segment delimiter for a recorded segment with a segment file, said segment delimiter identifying said recorded segment.

7. (Rejected) A method of claim 6, wherein said segment delimiter identifies a starting point of said recorded segment.

8. (Rejected) A method for producing a live or live-to-tape show, comprising the steps of:

(a)   enabling creation of an instruction sequence for the show, wherein said instruction sequence defines at least one set of production commands, said at least one- set of production commands comprising at least one or more segment file, which comprises a group of production commands for controlling at least one production device, the commands when executed, operates to produce a segment of the show, said at least one segment file comprising at least one scripted portion that included at least one command activated during a predetermined interval within a script that undergoes scrolling for display under control of an operator, and at least one non-scripted portion that includes at least one commands activated independent of the script, each segment having a duration which is defined by execution of said instruction sequence under the control of a human operator;

(b) executing said at least one set of production commands to control the at least one production device to thereby produce the show;

(c) executing said at least one commands to add a segment file to a show file prior to executing a first production command within the group of production commands corresponding to said segment file.

9. (Rejected) A method of claim 8, wherein a subsequent segment file is irreversibly appended to said show file prior to executing a first production command within the group of production commands corresponding to a preceding segment file.

10. (Rejected) A system for producing a live or live-to-tape show, comprising:

a processing unit in communication with at least one production device; generating

means for enabling creation of an instruction sequence for the show,

wherein said instruction sequence defines at least one set of production commands, comprising at

least one segment file, which comprises a group of production commands for controlling at least

one production device, the commands, when executed, operate to produce a segment of the

show, wherein said at least one segment file comprises at least one scripted portion that includes

at least one command activated during a predetermined interval in a script that undergoes

scrolling for display under control of an operator, and at least one non-scripted portions that

includes at least one command activated independent of the script, wherein the duration of each

segment is defined by execution of said instruction sequence under the control of a human

operator; and

executing means for executing said at least one set of production commands to control

the at least one production device, to thereby produce the show.

11. (Rejected) A system of claim 10, further comprising means for executing commands

to add a segment file to a show file prior to executing a first production command within the

group of production commands corresponding said segment file.

12. (Rejected) A system of claim 11, further comprising means for executing commands

to irreversibly append a subsequent segment file to said show file prior to executing a first

production command within the group of production commands corresponding to a preceding

segment file.

13. (Rejected) A system of claim 11, further comprising memory means for enabling

storage of said show file.

14. (Rejected) A system of claim 10, further comprising:

means for executing at least one command to record a show segment for subsequent

playback; and

means for executing at least one commands to integrate a segment delimiter for a

recorded segment with a segment file, wherein said segment delimiter identifies said recorded segment.

15. (Rejected) A system of claim 14 wherein said segment delimiter identifies a starting point of said recorded segment.

16. (Rejected) A method for producing a live or live-to-tape show, comprising the steps of:

(a)   receiving verbal instructions and converting said verbal instructions into signals to enable creation of an instruction sequence for the show, wherein said instruction sequence defines at least one set of production commands, said at least one set of production commands comprising at least one segment file, comprising a group of production commands for controlling at least one production device, the commands when executed, operates to produce a segment of the show, each segment file comprising at least one scripted portion that includes at least one command activated during a script that undergoes scrolling for display under control of an operator and at least one non-scripted portion that includes at least one command activated independent of the script, each segment having a duration which is defined by execution of said instruction sequence under the control of a human operator; and

(b)   executing said at least set of production commands to control the at least one production device and thereby produce the show.

17. (Rejected) A system for producing a live or live-to-tape show, comprising:
a processing unit in communication with at least one or more production devices;
means for receiving verbal instructions and converting said verbal instructions into signals to instruct said processing unit to create an instruction sequence for the show, wherein said instruction sequence defines at least one set of production commands for controlling at least one production device, the commands, comprising at least one segment file, comprising a group of production commands that, when executed, operates to produce a segment of the show, wherein said at least one segment file comprises at least one scripted portions that includes at least one command activated during a script that undergoes scrolling for display under control of an operator, and at least one non-scripted portions that includes at least one command activated

independent of, the script, wherein the duration of each segment is defined by execution of said instruction sequence under the control of a human operator; and

executing means for executing said at least one set of production commands to control the at least one production device, and thereby produce the show.

18. (Rejected) A method for producing a live or live-to-tape show, comprising the steps of:

(a)   creating an instruction sequence for the show to define at least one set of production commands, said at least one sets of production commands comprising at least one segment file, which comprises a group of production commands for controlling at least one production device, the commands, when executed, operates to produce a segment of the show, said at least one segment file comprising at least one scripted portions that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator, and at least one non-scripted portion that includes at least one command activated independent of the script, each segment having a duration which is defined by execution of said instruction sequence under the control of a human operator;

(b) executing said at least one-set of production commands to control the at least one production device, and thereby produce the show; and

(c) distributing at least one show segment over a computer network to a destination.

19. (Rejected) The method of claim 18, further comprising the step of:

(d) receiving, from said destination, a request to distribute said at least one show segment prior to executing step (c).

20. (Rejected) The method of claim 19, further comprising the step of:

(e)   defining a set of commands corresponding to said at least one segment that, when executed, enables selection of said at least one show segment for distribution.

21. (Rejected) The method of claim 20, further comprising the step of:

(f)   accessing a segment delimiter to enable selection of a show segment for distribution, said segment delimiter identifying and/or describing the content of said at least one

selected show segment.

22. (Rejected) The method of claim 20, further comprising the step of:

(f)   defining commands that, when executed, enable distribution of said selected one or more show segments over the Internet to said destination.

23. (Rejected) The method of claim 20, further comprising the step of:

(1)   defining commands that, when executed, enable distribution of said selected at least one show segment to comply with the Internet Protocol defined in Internet Standard 5, RFC 791, for transport over said computer network.

24. (Rejected) The method of claim 18, further comprising the step of:

(d)   defining commands that, when executed, distributes media related to said at least one show segment to said destination.

25. (Rejected) The method of claim 18, further comprising the step of:

(d)   distributing said at least one show segment over a wireless network to said destination.

26. (Rejected) A method for producing a live or live-to-tape show, comprising the steps of:

(a)   creating an instruction sequence for the show to define at least one-set of production commands, said at least one set of production commands comprising at least one segment files, comprising a group of production commands for controlling at least one production device, the commands when executed, operates to produce a segment of the show, said at least one segment file comprising at least one scripted portion that includes at least one command-activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator, and at least one non-scripted portion that includes at least one command activated independent of; the script, each segment having a duration which is defined by execution of said instruction sequence under the control of a human operator;

(b)   executing commands to associate at least one segment delimiter with at least one

segment file, said segment delimiter identifying a segment produced from a corresponding

segment file; and

      (c)   executing said one or more sets of production commands to control at least one

production device, and thereby produce the show.

      27. (Rejected) The method of claim 26, further comprising the step of:

      (d)   executing commands to distribute a show segment, upon production, to a

destination.

      28. (Rejected) The method of claim 27, wherein step (d) comprises the

step of:

      (1)   executing commands to distribute media related to said show segment to said

destination.

      29. (Rejected) The method of claim 27, wherein step (d) comprises the step of:

      (1)   deploying a wireless interface to distribute said show segment to said destination.

      30. (Rejected) The method of claim 26, further comprising the step of:

      (d)   receiving, from a destination, a request to distribute one or more show segments

prior to said destination.

      31. (Rejected) The method of claim 26, further comprising the step of:

      (d)   accessing a segment delimiter to enable selection of a show segment for

distribution to a destination.

      32. (Rejected) A method for producing a live or live-to-tape show,

comprising the steps of:

      (a)   enabling creation of an instruction sequence for the show to define at least one set

of production commands-comprising at least one segment file which comprises a group of

production commands for controlling at least one production device, the commands, when

executed, operates to produce a segment of the show, each segment file comprising at least one

scripted portion that includes at least one command activated during a predetermined interval in a script that undergoes scrolling for display under control of an operator, and at least one non-scripted portion that includes at least one command activated independent of, the script, each segment having a duration which is defined by execution of said instruction sequence under the control of a human operator;

(b)   executing said one or more sets of production commands to control the at least one production device to thereby produce the show;

(c)   executing commands to distribute a show segment and media related to said show segment to a destination.

33. (Rejected) The method of claim 32, further comprising the step of:

(d)   executing commands to distribute an advertisement to said destination.

34. (Rejected) The method of claim 32, further comprising the step of:

(d) executing commands to send media in response to a request for information related to said show segment.

35. (Rejected) The method of claim 32, wherein step (c) comprises the step of:

(1) executing commands to distribute said show segment at substantially the same time as producing said show segment.

9.   **RELATED EVIDENCE APPENDIX**

None.

10.   RELATED PROCEEDINGS APPENDIX

None